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6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7 EASTERN DISTRICT OF CALIFORNIA

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9 NORBERTO ARREDONDO, ) No. CV-F-06-056 REC  
10 ) (No. CR-F-97-CR-5167 OWW)  
11 Petitioner, ) ORDER DISMISSING SECOND  
12 vs. ) MOTION TO VACATE, SET ASIDE  
13 ) OR CORRECT SENTENCE PURSUANT  
14 UNITED STATES OF AMERICA, ) TO 28 U.S.C. § 2255 AND  
15 Respondent. ) DIRECTING ENTRY OF JUDGMENT  
16 \_\_\_\_\_) FOR RESPONDENT

17 On January 17, 2006, petitioner Norberto Arredondo filed a  
18 motion to vacate, set aside or correct sentence pursuant to 28  
19 U.S.C. § 2255. Petitioner contends that he is entitled to relief  
20 because the court imposed sentencing enhancements in violation of  
21 United States v. Booker, 543 U.S. 220 (2005).<sup>1</sup>

22 The court hereby dismisses petitioner's motion.

23 On July 2, 2001, petitioner filed a Section 2255 motion

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25 <sup>1</sup>Although the underlying criminal action has been transferred  
26 to the docket of Judge Oliver W. Wanger, petitioner's Section 2255  
motion was assigned to this court because this court sentenced  
petitioner.

1 based on Apprendi v. New Jersey, 530 U.S. 466 (2000). See  
2 Arrendono v. United States, No. CV-F-01-5851 REC. By Order filed  
3 on July 5, 2001, the court denied this Section 2255 motion.  
4 Therefore, the instant motion is a second or successive Section  
5 2255 motion. Petitioner must first apply to the Ninth Circuit  
6 Court of Appeal for leave to file such a motion. In the absence  
7 of authorization from the Ninth Circuit, this court does not have  
8 jurisdiction to hear it. See United States v. Allen, 157 F.3d  
9 661, 664 (9<sup>th</sup> Cir. 1998).

10 Petitioner, citing McClesky v. Zant, 499 U.S. 467 (1991),  
11 argues that the instant motion should not be construed by this  
12 court as a "second or successive" motion because his challenge to  
13 his sentence under Booker is a new issue that did not exist and  
14 could not have been raised at the time he filed his initial  
15 Section 2255 motion. However, even if the court assumes  
16 petitioner's position is correct, petitioner would not be  
17 entitled to relief. Booker is not retroactive to cases on  
18 collateral review. United States v. Cruz, 423 F.3d 1119 (9<sup>th</sup>  
19 Cir. 2005).<sup>2</sup>

20 ACCORDINGLY:

21 1. Petitioner Norberto Arredondo's second motion to vacate,  
22 set aside or correct sentence pursuant to 28 U.S.C. § 2255 is

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24 <sup>2</sup>Petitioner argues that the court should hold the instant  
25 motion in abeyance pending resolution by the Supreme Court of  
Washington v. Recuenco, No. 05-83. The court denies this request.  
The issue before the Supreme Court in Recuenco does not address the  
26 applicability of Booker to cases on collateral review.

1 dismissed.

2       2. The Clerk of the Court is directed to enter judgment for  
3 respondent.

4       IT IS SO ORDERED.

5 **Dated:** January 23, 2006  
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5       /s/ Robert E. Coyle  
6 UNITED STATES DISTRICT JUDGE

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